IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 62 OF 2004.

Sayeed Mehbood,
Presently lodged in Central
Jail, Aguada, Aguada,
Goa. ..... Petitioner.

Versus

1. State of Goa,
   thro' Chief Secretary,
   Panaji, Goa.
2. Inspector General of Prisons
   Collectorate, North Goa,
   Panaji, Goa.
3. The Superintendent of Prisons,
   Central Jail, Aguada, Goa. .... Respondents.

Ms. Asha A. Desai, Advocate for the Petitioner.

Ms. W. Coutinho, Addl. Public Prosecutor for the State/Respondent.

CORAM: N. A. BRITTO, J.

DATE: 17th December, 2004.

ORAL ORDER:

The petitioner, in this petition, takes exception to the Order dated 9.6.04 of the Inspector General of Prisons, Panaji, by which the Inspector General of Prisons has directed the Superintendent of Central Jail, Aguada, to forfeit the amount of personal bond furnished by the petitioner and to take steps to recover identical amount from the surety.

2. Some more facts are required to be stated to dispose of the present

petition.

3. The petitioner is a convict undergoing sentence in Sessions Case No. 19/97 under Section 304(I) and Section 323 r/w Section 34 I.P.C. The petitioner had approached the said Inspector General of Prisons with a request to release him on parole, but the said request was declined by Order dated 4.7.03. The said order was challenged by the petitioner before this Court in Criminal Writ Petition No.2/04 and this Court by Order dated 29.1.04 was pleased to direct the release of the petitioner on parole for a period of thirty days with certain conditions.

4. The petitioner, pursuant to the said Order of this Court dated 29.1.04 availed the parole on 9.2.04 and on that day also executed a bond agreeing to surrender before the Superintendent of Central Jail, Aguada at 6 O'Clock on 9.3.04.

5. The petitioner thereafter sought an extension of the said parole to the Inspector General of Prisons for a period of 45 days on the ground that his mother was suffering from hypertension and respiratory infection. The Inspector General of Prisons was pleased to inform the petitioner that since parole was granted to him by this Court, the petitioner should move this Court for extension.

6. Accordingly, the petitioner approached this court in Criminal Misc. Application No.57/04 and this Court by Order dated 8.3.04 was pleased to

extend the period of parole of the petitioner by ten days from 9.3.04. This Court further directed that in case the petitioner filed an application for extension of parole, the Inspector General of Prisons should deal with the same according to law.

7. Admittedly, the petitioner surrendered to the Superintendent of Central Jail, Aguada on 19.3.04. According to the Inspector General of Prisons, the petitioner was required to surrender on 18.3.04 at 6.00 p.m. That is also the stand taken on behalf of the Inspector General of Prisons in the affidavit filed. According to the Inspector General of Prisons the petitioner jumped parole by one day, as he was required to surrender on 18.3.04 at 6 p.m. And the petitioner having committed breach of the conditions imposed upon him, the Inspector General of Prisons directed the Supdt. of Central Jail to take steps to forfeit (recover) the amount due from the prisoner and the surety bonds executed by the accused/surety.

8. At the time of arguments, Ms. Dessai, the learned counsel appearing on behalf of the petitioner has submitted that the 10th day ended on 19.3.04 on which day the petitioner surrendered and therefore there was no default committed on the part of the petitioner. In support of her submission, learned Advocate Ms. Dessai has referred to Section 9 of the General Clauses Act , 1897 and to the decisions of the Supreme Court in the case of **Haru Das Gupta v. The State of West Bengal [(1972) 1 S.C.C. 639]** and **Saketh India Ltd. And others v. India Securities Ltd. [(1999) 3 S.C.C. 1)**.

9. In the first case of Haru Das Gupta (supra) the Supreme Court was concerned in computing the period of detention and whilst so computing the period of three months from the date of detention, the Supreme Court stated that date of commencement of detention is to be excluded. The Supreme Court also stated that as a general rule, the effect of defining a period from such day until such day within which an act is to be done is to exclude the first day and to include the last day and the said rule is being followed consistently and for a long period.

10. In the case of Saketh India Ltd. (supra) the Supreme Court was concerned with computing 15 days period for making payment by the drawer under the proviso © to S.138 of the Negotiable Instruments Act , 1881, and in so computing the Supreme Court observed that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. In other words, the Supreme Court stated that the effect of defining the period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day.

11. We are not really concerned in computing the time under any Central Act or Regulation although by virtue of the provisions of G.D.D. General Clauses Act, 1965 the provisions of the General Clauses Act, 1897 have been made applicable while interpreting the provisions of every Act passed by the Legislative Assembly of Goa, Daman and Diu.

12. As already stated, in terms of the order of this Court dated 8.3.04 the

petitioner having availed parole on 9.2.04 of 30 days, was to surrender on 9.3.04. As can be seen from the copy of the bond executed by the petitioner, a copy of which has been submitted along with the affidavit-in-reply, the petitioner was required to surrender to the Central Jail at 6 O'Clock on 9.3.04. In case the said period of parole was extended by one day, the petitioner would be required to surrender on 10.3.04. In the case at hand the petitioner's period of parole was extended by ten days from 9.3.04 and the said period expired on 19.3.04 at 6 p.m. The computation done by or on behalf of the Inspector General of Prisons that the said period expired on 18th cannot be accepted. In any event this was certainly not a case that the petitioner had jumped parole. The petitioner did surrender on 19.3.04 and presumably because according to the petitioner the extension expired on that day. Being so, the I.G.P. ought to have shown some discretion and not ordered to recover the entire amount of the bonds executed by the petitioner and/or his surety.

13. However, in the light of the conclusion I have arrived at, that the extended period expired on 19.3.04 at 6 p.m., the impugned Order dated 9.6.04 cannot be sustained. The same is therefore hereby set aside, and, in case any amount is recovered from the Petitioner and/or his surety by the Supdt. of Central Jail, Aguada as per Order dated 9.6.04, the same shall be returned to the petitioner or his surety, as the case may be.

N. A. BRITTO, J.

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